S.B. Civil Writ Petition NO.5859/2004
(Wolkem Industries Ltd Vs. State & Anr.)

Date of order : 9.5.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. J.P. Joshi, for the petitioner.
Mr. N.M. Lodha, Addl. Advocate General.

By way of filing the present writ petition, the petitioner has challenged the notification dated 19.8.2004 and prayed that the respondents may be restrained from granting any mining lease in pursuance of the notification dated 19.8.2004. It has been further prayed that the respondents may be directed to grant mining lease to the petitioner in accordance with the law with regard to Block 4-F of Village Ahmadpura, District, Nagaur on the application submitted by petitioner in response to the notification dated 31.3.2003.

According to the facts of the case, the State Government in exercise of the power conferred by Section 17-A of the Mines & Minerals (Development & Regulation) Act, 1957 (hereafter referred to as "the Act of 1957) issued a notification dated 25.9.1996 reserving entire area in the Nagaur District for mining operations with regard to lime stone, leaving aside 4 areas mentioned in the said notification. The State Government issued another notification dated 30.11.2000, which was published in the Official Gazette on 2.12.2000, de-reserving 49 Sq. Kms. Of

areas in Nawalgarh, District Jhunjhunu for lime stone.

According to the petitioner, the State Government issued yet another notification on 31.3.2003, which was published in the Official Gazette on 2.4.2003, giving relaxation in the notification dated 25.9.1996 and 2.12.2000 and de-reserved 4 blocks of the Nagaur District.

The petitioner applied for grant of mining lease to the State Government in pursuance of the notification dated 31.3.2003 (Annexure-3) and submitted site plan along with other relevant documents as required under the notification. The application filed by the petitioner in pursuance of the notification dated 31.3.2003 was received by the Department on 24.2.2004.

It is submitted by the learned counsel for the petitioner that during the pendency of the application submitted for grant of mining lease with regard to the area de-reserved by the Government, the State Government issued yet another notification dated 19.8.2004, inviting applications for grant of mining lease with regard to Blocks No.3-A and 4-F in the Nagaur District under Section 59 of the Rajasthan Minor Mineral Concession Rules, 1986. Against the said notification, a representation was made by the petitioner on 16.9.2004, which is placed on record as

Annexure-7.

It is submitted by the learned counsel for the petitioner that the representation made by the petitioner against the notification dated 19.8.2004 is still pending decision before the State Government.

This Court in identical matter being SB Civil Writ Petition No.5891/2004, challenging the same notification, vide order dated 21.12.2004 while admitting the writ petition ordered as follows :

> "Meanwhile, the applications invited in pursuance of notification dated 19.8.2004 under the Minor Mineral Concession Rules shall not be disposed of"

During the course of arguments, Mr. N.M. Lodha, Addl. Advocate General submitted that the representation made by the petitioner is still pending decision, therefore, no cause of action arises in this case.

I have considered the submissions made by both the learned counsel for the parties and perused the record of the case.

In my opinion, the respondents are under an obligation to decide the representation dated 16.9.2004 (Annexure-7) submitted by the petitioner

against the notification dated 19.8.2004 because earlier under the notification dated 31.3.2003, the petitioner filed an application for grant of mining lease and in the subsequent notification, he was having preferential right under Section 11 of the Act of 1957 because the said notification has not been repealed or superseded and no decision has been given upon the representation filed by the petitioner on 16.9.2004. Therefore, in the interest of justice, the respondents are directed to decide the representation made by the petitioner on 16.9.2004 (Annexure-7) with regard to the grant of mining lease within a period of two months from the date of receipt of certified copy of this order. However, if any adverse order is passed upon the representation filed by the petitioner, the petitioner shall be at liberty to challenge the same in accordance with the law and the applications invited in pursuance of notification dated 19.8.2004 under the Minor Mineral Concession Rules shall not be disposed of for a period of fifteen days from the date of passing of final order upon representation made by the petitioner.

With these directions, the petition is disposed.

(GOPAL KRISHAN VYAS), J .

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